IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2201 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

PRAVINSINGH GHAMBHIRSING RANA

Versus

VANRAJSINGH KARSANBHAI

Appearance:

SINGHI & BUCH ASSO. for Petitioner

MR JITENDRA M PATEL for Respondent No. 1

SERVED for Respondent No. 2

CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 05/05/97

ORAL JUDGEMENT

Revenue entry No.1827 made on 3.12.1956 and certified on 22.1.1957 and entry No.3851 made on 16.8.1973 and certified on 22.9.1976 in relation to land bearing Survey No.382/1 have been challenged by

respondent No.1 after a period of about 18 years before the Deputy Collector, Bharuch invoking Rule 108 (5) of the Land Revenue Code. The Deputy Collector vide his order, Annexure-A, dated 11.4.1995 dismissed the appeal. Aggrieved by the order, respondent No.1 preferred Revision Application No.33 of 1995 before the Collector, Bharuch. However, the same was rejected vide order, Annexure-B, dated 30.11.1995 and confirmed the order of Deputy Collector. Respondent No.1 aggrieved by both the above-referred orders, preferred Revision Application No.2 of 1996 before the Special Secretary (Appeals), Revenue Department, Government of Gujarat. The learned Secretary taking into consideration additional evidence produced at second appellate stage allowed the revision vide order, Annexure-C, dated 30.1.1997 setting aside both the orders passed by the Deputy Collector as well as the Collector, Bharuch. Aggrieved by this order, the petitioner has filed this petition invoking writ jurisdiction under Articles 226 and 227 of the Constitution of India.

2. Respondent No.1 has opposed the petition by filing affidavit-in- reply. Mr.J.M.Patel for respondent No.1 has vehemently argued that so-called entry No.1827 certified in 1956 and entry No.3851 certified in 1976 are without jurisdiction, against the express provisions of law and thus being nullity has no recognition in the eyes of law and can be challenged after any length of period. According to Mr.Patel, law does not prescribe any limitation for challenging an act which is ab initio void and nullity.

3. Heard learned Advocates. Perused material on record. As a cardinal rule, every order has to be challenged within reasonable period. The power of High Court to issue appropriate writ is discretionary and while exercising such power, High Court shall not be instrument to assist tardy, indolent, lethargic or acquiescent persons. As a well-settled principle, inordinate delay on the part of the petitioner has to be explained satisfactorily and for want of satisfactory explanation the court may decline to intervene and grant appropriate relief. Exercise of such powers after inordinate delay and resorting to extraordinary remedy at a belated stage may cause confusion, public inconvenience and injustice to the parties, to the litigants and many a times even to third parties. Filing of appeal after unreasonable delay may have the effect of inflicting not only hardship but inconvenience and also unsettle the things which are settled. On this point reliance is placed upon a judgment reported in AIR 1987 Supreme Court

251 in the case of STATE OF M.P. v. NANDLAL. In the instant case, by virtue of disputed entries, rights have already been created in favour of the petitioner by virtue of operation of law, that is, by succession, consequently, issuance of any writ would adversely affect rights of the petitioner who is not directly a party to the disputed entry.

4. Mr.Patel has vehemently argued that the entries are de horse the provisions of law, without jurisdiction and nullity and can be challenged after any length of period but has failed to satisfy the court as to how the entry is without jurisdiction or against the express provisions of law so as to render it a nullity. It is true that an order which is nulllity or ab initio void can be challenged after any length of period but before doing so the party has to satisfy the court that the impugned order/entry is ab initio void and nullity. As stated above, respondent No.1 has utterly failed to establish so.

5. The impugned order of the Special Secretary (Appeals) can also not be sustained at law because the same has been passed overlooking the relevant provisions of law and is arbitrary, illegal and unfair. While passing the impugned order dated 30.1.1997, the Special Secretary (Appeals) has relied upon additional evidence produced at second appellate stage. It is true that additional evidence can be produced and relied even at appellate stage as provided under Order 41 Rule 27 of the Code of Civil Procedure (the C.P.Code for brief). It is apparent on the face of record that the Special Secretary (Appeals) has ignored the provisions of Order 41 Rule 27 of the C.P.Code and has taken into consideration the additional evidence without hearing the petitioner.

6. The production of additional evidence is against the provisions of Order 41 Rule 27 of the C.P.Code. It is not the case of respondent No.1 that the additional evidence produced before the second appellate authority was in existence, and despite due diligence and search was not able to lay hand and it is only after the judgment of lower authority, respond No.1 could find out such evidence and is relevant for the purpose of deciding the controversy. The observation clearly suggests that the additional evidence was procured by respondent No.1 after both the authorities had decided the question on merits. In my view, reference of such evidence for reversing the judgment of lower authority is completely de hors the provisions of law and beyond jurisdiction of the second appellate authority. No satisfactory

explanation is given by respondent No.1 as to why such evidence was not produced before the lower authority though was in existence. On the contrary, the so-called explanation leads to draw an inference that the additional evidence produced at second appellate stage appears to have been fabricated in collusion with some officers. Thus, the act of the Special Secretary (Appeals) is illegal, without jurisdiction and against the provisions of law. Therefore, for the reasons stated above, the petition requires acceptance.

7. In the result, the petition is allowed. The order, Annexure-C, dated 30.1.1997 passed by the Special Secretary (Appeals) in Revision Application No.2 of 1996 is hereby quashed and set aside. Order, Annexure-B, dated 30.11.1995 passed by the Collector in Revision Application No.33 of 1995 is hereby restored. Rule is made absolute accordingly with no order as to costs.

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